

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.34627 of 2004

P.Ramachandran

.. Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary,
Rural Development and
Local Administration Dept.,
Fort St.George,
Chennai-600 009.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Executive Officer,
Nandivaram, Guduvancheri Town Panchayat,
Guduvancheri,
Kancheepuram District.
4. P.Karunanithi

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents herein to remove the encroachment in the Pillaiyar Koil Street, Viswanathapuram, Guduvancheri, belonging to Nandivaram-Guduvancheri Town Panchayat, Kancheepuram District.

For petitioner : Mr.R.Neethe Perumal

For respondents: Mr.Akhil Akbar Ali,
Govt. Advocate for RR-1 to 3
No appearance for R-4

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents herein to remove the encroachment in the Pillaiyar Koil Street, Viswanathapuram, Guduvancheri, belonging to Nandivaram-Guduvancheri Town Panchayat, Kancheepuram District.

2. It is seen that the third respondent has issued notice dated 03.05.2004 to the fourth respondent for removal of encroachment in question. In the typed set of papers, the learned counsel for the petitioner has also produced the photos of encroachment and the sketch to show that there is encroachment. Learned Government Advocate appearing for the respondents 1 to 3 submitted that the respondents 1 to 3 will take steps to remove the encroachment and demolish the building in question, if the building has been constructed in violation of the sanctioned plan. It is clear from a perusal of the materials available on record that the fourth respondent has encroached on the road.

3. With regard to the encroachment, it is useful to refer a decision of a Division Bench of this Court in the case of M.P.Aravinda Vs. The Commissioner, Corporation of Chennai and others, W.P.No.28311 of 2016, dated 04.10.2016, wherein the Division Bench held as follows in paragraph 7:

"7. However, before parting with this case, it would be useful to refer to the direction of this Court, in W.P.38432 of 2015, etc., wherein, by order dated 07.09.2016, this Court has observed that very many encroachments are found throughout the city of Chennai, which requires to be dealt with sternly, but for the ineffective steps taken by the authorities concerned, such encroachments would not have continued. It is high time that dynamic action needs to be taken by the authorities concerned so as to avoid public lands being usurped by unscrupulous elements. This Court, in the abovesaid writ petition, has given certain guidelines for the authorities to follow in respect of any encroachments being brought to its notice. The relevant portion of the order, for better clarity is extracted hereunder:

"12. Whenever it is brought to notice that there is land encroachment on the roads or in any other place or violation of construction, it is open to the authorities concerned to call for the following details from the violator by issuing appropriate notice:

- (a) Registered Deed based on which the property has devolved upon the person;
- (b) Extent of square feet mentioned in the Schedule property;
- (c) Width of the road;
- (d) Actual constructed area;
- (e) Approved plan;
- (f) Whether set back space has been provided as per the Plan/Rules."

4. In the above extracted paragraph mentioning W.P.No.38432 of 2015, etc., batch, dated 07.09.2016, the Division Bench of this Court further observed that it is the bounden duty of the person who receives the notice to furnish all the details called for, failing which, it has to be presumed that there are violations and it is open to the authorities to act as per law. Wherever there are encroachments on road, road width has got to be restored. If there is no Building Plan, deviations, if any, have got to be removed by the petitioner. If not, the authorities are entitled to remove the same in accordance with law, recovering the demolition costs from the encroacher.

5. Further, in yet another Division Bench decision of this Court, in the case of M/s.Aara Silk, rep. by its Partner Vs. The Principal Director, Southern Command, IDES Guest House, Cross Road, Pune, Maharashtra State and the Chief Executive Officer, Cantonment Board, St.Thomas Mount, Chennai-600 043, in W.P.No.29985 of 2016, dated 29.09.2016, it is held as follows in paragraph 20:

"20. It is pertinent to note that recently, the First Bench of this Court (S.K.Kaul, CJ and R.Mahadevan,J) in Contempt Petition No.1769 of 2015 and Contempt Petition No.2166 of 2015 (Suo Motu), took up a matter pertaining to demolition of the violated portions of a building and insisted that the unauthorised constructions are decimated. Relevant portion of the said order reads thus:

"4. We have also perused the report of the Commissioner, who is present in Court. We have impressed upon him the importance of ensuring that there is atleast no continuing unauthorised construction by issuing stop work notices immediately when such unauthorised construction is detected rather than waiting for comparison of the plans. We have also emphasised the importance of:

(a) Checking the buildings from the basement, ground floor onwards, so that the set backs are adhered to;

(b) Ensure that the on-going construction complies with the norms;

(c) The delinquent officers are brought to book not by mere consure, stoppage of increment, but by more severe consequences like compulsory retirement and dismissal from service. We say so, as despite, mammoth amount of unauthorised construction, we are informed that not a single person has

suffered the punishment of dismissal from service or even compulsory retirement atleast for the last five years.

(d) Not to let any unnecessary interference with his work by the persons, who have nothing to do with his job and that he should be able to do his task without fear or favour, for which necessary Court protection is available." "

6. Further, it is worthwhile to refer a decision of the Full Bench of this Court reported in 2005 (2) CTC 741 (FB) (Madurai Bench of Madras High Court) (Ramaraju.T. Vs. The State of Tamil Nadu), wherein it is observed as follows:

"38.

(1) If the encroachment is on road or road margins, vested in Municipalities, the removal if any is to be effected only after following the procedure contemplated in Chapter IX of the Tamil Nadu District Municipalities Act and more particularly the provisions contained in Section 182 and Section 183 (6). Before taking action under Section 182 of the District Municipalities Act, notice in writing giving atleast two weeks time should be served and, if the person avoids to receive the notice, such notice can be effected by affixure. However, notice by any other means, such as through public announcement or beating of drums or by general notice in newspapers, may not be sufficient.

.. . . .

(3) Payment of property tax, provisions of water connection or electricity by themselves cannot be construed as conferring any independent right, if the encroachment is otherwise unauthorised.

(4) The above directions and observations are also applicable to encroachment in respect of road or road margins coming within the jurisdiction of Municipal Corporation or Town and Village Panchayats, in which event, necessary action can be taken by the concerned authorities by following the relevant provisions of law applicable to such Corporation or Panchayats.

.. . . .

(6) If the encroachment is on the land belonging to the Local Authorities, but such land is not part of the road or road margin or roadside land, eviction can be effected by following the procedure contemplated in law, namely, either by taking recourse to the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 or any other law applicable or otherwise by taking recourse to Civil Courts and not by use of unilateral force.

(7) So far as the encroachment on the land belonging to the Government is concerned, action for eviction if any can be taken only by the appropriate authority and by following the procedure contemplated under the Tamil Nadu Land Encroachment Act, 1905.

.. . . ."

7. In all cases, including this Writ Petition, if there is any unauthorised encroachment/violation, the Government would be right in invoking the relevant provisions of the Act/Rules concerned and the building so constructed unauthorisedly, shall be razed to the ground, and at any rate, an entry in the Revenue papers have also got to be corrected, which form the basis for declaration of title to the respective party/parties.

8. Further, in all cases of encroachment, the authorities shall ensure removal of the encroachment. If it is within the city limits, the Commissioner of Police, the Member Secretary of the Chennai Metropolitan Development Authority and the Commissioner of the Corporation, and if it is outside the jurisdiction of the city limits, the concerned Municipal authorities/Panchayat authorities and the other Town and Country Planning authorities shall ensure that the encroachments or unauthorised encroachments or plan violated constructions, are removed/demolished immediately after due notice in accordance with the relevant provisions of the Act/Rules concerned.

9. With the above observations and direction, the Writ Petition is disposed of. If there is any violation in the plan and if there is unauthorised construction/encroachment, the building in question in this case can be razed to the ground. No costs. W.P.M.P. is closed.

10. It is also brought to the attention of this Court that whenever petitions are pending under Section 80-A of the Tamil

Nadu Town and Country Planning Act, 1971, the Government, represented by its Secretary, Rural Development and Local Administration Department or Secretary, Housing and Urban Development Department or any other authority concerned, takes his/her sweet time to decide the issue, even though there are specific directions to decide the matter within a time limit. Not hearing the applicant/complainant on the ground that the High Court order is silent to hear the applicant/complainant or there is no provision to hear the applicant/complainant, would be fatal, if there is illegal construction/encroachment/violation of plan, etc., as the complainant would be the best person to bring to the attention of the authorities about the violation of plan/illegal construction/encroachment. No prejudice is going to be caused to any one if the applicant/complainant is heard. This Court makes it clear that whenever such applications are pending, while hearing the applicant/complainant, if any other person will have to be heard before arriving at a decision, that person will also have to be heard and, as the plan will throw better light on the issue, the Rural Development and Local Administration Department Secretary/Housing and Urban Development Department Secretary/any other authority concerned of the State of Tamil Nadu shall demand authorised plan and ascertain from the person concerned as to whether the construction has been made as per the plan, leaving proper set back, and decide the issue after hearing the applicant/complainant and after getting comments from the CMDA and the Corporation in all pending matters.

11. The Chief Secretary to Government, Secretariat, Chennai, and the Chief Secretary to Government, Secretariat, Union Territory of Pondicherry, Pondicherry, are directed to communicate the above observations made by this Court to all the Secretaries to Government of the State of Tamil Nadu/Union Territory of Pondicherry to enable them to follow the yardstick of hearing the complainant so that the matter can be given a quietus to. While taking up the matter, the authorities concerned must enquire as to whether the application has been made based on the complaint and if a reply is given that there is no complaint and subsequently if it is found to be false, on that score itself, the request of the applicant can be rejected.

12. Registry is directed to issue this order copy to the Chief Secretary to Government, Secretariat, Chennai, the Chief Secretary to Government, Secretariat, Union Territory of Pondicherry, the Secretary to Government, Rural Development and Local Administration Department, Secretariat, Chennai, the Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai, the Member Secretary of the CMDA, Chennai, the Commissioner of Police, Chennai City and the Commissioner of Corporation of Chennai, all of whom shall ensure

that the above directions are strictly complied with in all the Districts of Tamil Nadu State/Union Territory of Pondicherry. The said direction is also equally applicable to the Union Territory of Pondicherry and direction is also accordingly issued to the Town and Country Planning Authorities of the Union Territory of Pondicherry for compliance of the same.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cs

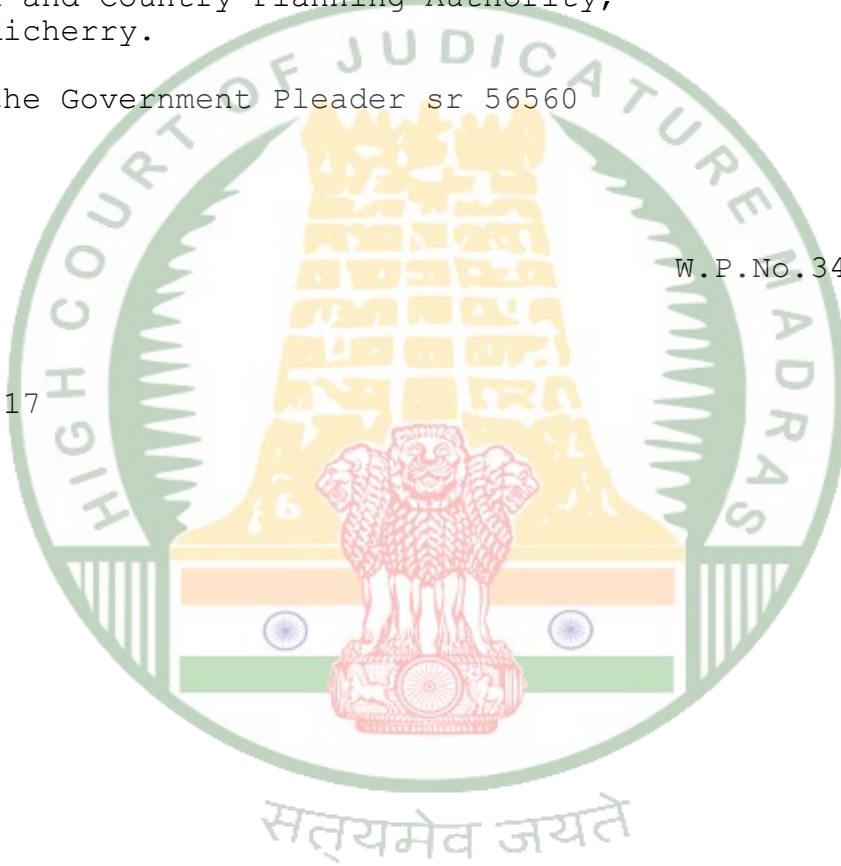
Copy to

1. The Chief Secretary to Government,
Secretariat,
Fort St.George,
Chennai-600 009.
2. The Chief Secretary to Government,
Secretariat,
Union Territory of Pondicherry,
Pondicherry.
3. The Secretary to Government,
Rural Development and
Local Administration Dept.,
Secretariat,
Fort St.George,
Chennai-600 009.
4. The Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort St.George,
Chennai-600 009.
5. The District Collector,
Kancheepuram District,
Kancheepuram.

6. The Executive Officer,
Nandivaram, Guduvancheri Town Panchayat,
Guduvancheri,
Kancheepuram District.
 7. The Commissioner of Police, Chennai City, Chennai-8.
 8. The Commissioner, Corporation of Chennai, Chennai-3.
 9. The Member Secretary, Chennai Metropolitan Development
Authority,
Chennai-8.
 10. The Officer-in-charge,
Town and Country Planning Authority,
Pondicherry.
- +1 cc to the Government Pleader sr 56560

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